Filed 1/25/19 P. v. Manzo CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. RUBEN RENE MANZO, Defendant and Appellant.	G054828 (Super. Ct. No. 12NF0420) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, H. Warren Siegel, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Kevin D. Sheehy, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Susan Elizabeth Miller, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted Ruben Rene Manzo of committing sex offenses against two children. In this appeal, Manzo contends that the trial court improperly admitted statements he made to the police in violation of the United States Supreme Court's holdings in *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*), and *Missouri v. Seibert* (2004) 542 U.S. 600 (*Seibert*).

We find no errors and affirm the judgment.

I

FACTS AND PROCEDURAL BACKGROUND

On October 26, 2011, officers from the Los Angeles Police Department seized Manzo's computers from his home in Fullerton pursuant to a search warrant. Based on information from an Internet service provider, the police suspected that 18-year-old Manzo was in possession of child pornography.

On November 27, 2011, four-year-old Rick G. was attending a family party at his grandmother's house. Manzo was alone in a bedroom with Rick, a distant relative. While they were playing video games, Manzo touched and manipulated Rick's penis underneath his clothing. On the way home, Rick told his father that Manzo had rubbed his private part. Rick's parents reported the incident to the police.

On November 29, 2011, Rick participated in a child abuse services team interview. Rick told a social worker what had happened at the party; he also said that Manzo had touched his bottom on prior occasions.

On November 30, 2011, police officers interviewed Manzo at his parent's home. Manzo admitted that there was child pornography on his computers, but denied touching Rick's penis. Fullerton Police Officer Veronica Gardea asked Manzo: "Maybe you, you . . . did touch him, and, . . . you know. Was it a mistake, or . . . ?" Manzo responded: "Well, I didn't do anything. But . . . if I did do anything, . . . I guess it, it's just a mistake. But I'll stick to my story." After interviewing Manzo for about 30

minutes at his home, the police arrested Manzo and took him to the police station. Once at the station, Gardea advised Manzo of his *Miranda* rights. After waiving his constitutional rights, Manzo admitted that he had touched Rick's penis under his clothes at the family party.

Court Proceedings

The prosecution filed an information charging Manzo with one count of committing a lewd and lascivious act upon Rick, and one count of possessing child pornography. (Pen. Code, §§ 288, subd. (a), 311.11, subd. (a).)[1] The information also charged one count of oral copulation or sexual penetration, and two counts of committing a lewd and lascivious act upon a second alleged victim.[2] (§§ 288.7, subd. (b), 288, subd. (a).) The information further alleged that Manzo had substantial sexual contact with the two alleged victims (masturbation), as well as multiple victim allegations. (§§ 1203.066, subds. (a)(7) & (8), 667.61, subds. (b) & (e)(4).)

Before the start of a jury trial, Manzo pleaded guilty to the child pornography charge. Manzo also filed a motion in limine to exclude his statements to the police. As to the interview at his home, Manzo claimed that he was in custody without *Miranda* warnings. As to the interview at the station, Manzo claimed that the police deliberately engaged in a two-step interrogation process designed to undermine the *Miranda* warnings. (*Seibert*, *supra*, 542 U.S. 600.) Manzo attached transcripts of the two interviews to his motion. Officer Gardea testified at the hearing on the motion in limine. The court also listened to a portion of an audio recording of the police interview at Manzo's home.

---

[1] All further undesignated statutory references will be to the Penal Code.

[2] The facts involving the second victim are irrelevant to the issues raised in this appeal.

Officer Gardea testified that she went to Manzo's home at about noon to investigate the suspected child sexual assault (Rick). Manzo's parents were present. Gardea was accompanied by Detective Williams, and a school resource officer (SRO) from Manzo's school. Gardea and Williams were dressed in plain clothes, while the SRO was in uniform. Gardea and Williams interviewed Manzo in the living room while the SRO spoke to Manzo's mother in the kitchen.

During the interview, Gardea and Williams were seated on a couch while Manzo was seated on a different couch about five feet across from them. At one point, Manzo's father entered the living room. The police did not tell Manzo's father that he could not come into the living room or that he could not speak to his son. The interview lasted about 30 minutes, at which point Manzo was arrested. Prior to taking him to the station, the police allowed Manzo to get some shoes and additional clothing.

Officer Gardea testified that Manzo was handcuffed and transported to the police station in the back of a police vehicle. The station was approximately a 10-minute drive from Manzo's home. Manzo was booked and interviewed. The interview began approximately 45 minutes after they had left Manzo's home. At the beginning of the interview Gardea read Manzo his *Miranda* rights and obtained a waiver.

The trial court denied Manzo's motion to exclude his statements to the police. The jury later found Manzo guilty and found the sentencing allegations to be true. The court imposed an aggregate sentence of 60 years to life.

II

DISCUSSION

"No person . . . shall be *compelled* in any criminal case to be a witness against himself . . . ." (U.S. Const., 5th Amend., italics added.) Generally, the prosecution cannot introduce *compelled* statements against a defendant during its case-in-chief. "Failure to administer *Miranda* warnings creates a presumption of compulsion."

(*Oregon v. Elstad* (1985) 470 U.S. 298, 306-307.) "Consequently, unwarned statements that are otherwise voluntary within the meaning of the Fifth Amendment must nevertheless be excluded from evidence under *Miranda*." (*Id.* at p. 307.)

An appellate court's determination of whether a suspect was in custody for *Miranda* purposes is a mixed question of fact and law. (See *People v. Cromer* (2001) 24 Cal.4th 889, 894-895.) Mixed questions of fact and law that implicate constitutional rights are subject to independent review, but reviewing courts apply a deferential standard of review to the trial court's findings of fact. (*Ibid*.)

Manzo argues that the interview in his home was a custodial interrogation in violation of *Miranda*, *supra*, 384 U.S. 436, and the interview at the police station was part of a deliberate two-step interview process in violation of *Seibert*, *supra*, 542 U.S. 600.

A. The police interrogation of Manzo in his home was not custodial.

Generally, an officer must warn a suspect of his or her "*Miranda* rights" when the suspect is subjected to a "'custodial interrogation.'" (*People v. Mickey* (1991) 54 Cal.3d 612, 648.) The test is objective; would "a reasonable person in defendant's position have felt he or she was in custody." (*People v. Stansbury* (1995) 9 Cal.4th 824, 830.) "Although the circumstances of each case must certainly influence a determination . . . , the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." (*California v. Beheler* (1983) 463 U.S. 1121, 1125.)

Courts have identified several factors to determine whether a suspect was in custody for *Miranda* purposes. (*People v. Aguilera* (1996) 51 Cal.App.4th 1151, 1162.) "Among them are whether contact with law enforcement was initiated by the police or the person interrogated, and if by the police, whether the person voluntarily agreed to an interview; . . . where the interview took place; whether police informed the person that he

or she was under arrest or in custody; . . . ; how long the interrogation lasted; how many police officers participated; whether they dominated and controlled the course of the interrogation; . . . ; whether the police were aggressive, confrontational, and/or accusatory; whether the police used interrogation techniques to pressure the suspect; and whether the person was arrested at the end of the interrogation." (*Ibid*.)

Here, before making its ruling, the trial court reviewed a transcript of the two interviews and listened to a portion of the first interview at Manzo's home. The court stated: "So the key really is what happened at the house. Listening to the conversation actually was helpful because it's apparent that the conversation was extremely low key on both sides. There is no sense of urgency or excitement on either the officer's part or the defendant's part. [¶] Also reading the transcript and listening to the conversation, I think it's clear that the visit was expected. They said it was a follow up to what the L.A.P.D. had done [confiscation of the computers in the home]. But the parents invite the officers in. They call the defendant. I think I have to find that the first interview was not a custodial interview. The circumstances were very free and open in his own home. He wasn't told he couldn't leave. The parents were there. They're the ones that brought them in. [¶] So the inference to me is everybody was expecting this and, therefore, I believe the statements are admissible."

Based on our independent review of the record we agree with the trial court's analysis. There is sufficient evidence to support the court's factual finding that the interview was expected. It is also clear that Manzo voluntarily consented to the interview. We further agree that the interview appears to have been nonconfrontational or "extremely low key on both sides." Although there were three police officers present, only two of them participated in the interview, and both of those officers were in plain clothes. Moreover, all of the interview participants were seated on couches in the living room. In short, the interview does not appear to have been "aggressive, confrontational, and/or accusatory." (See *People v. Aguilera*, *supra*, 51 Cal.App.4th at p. 1162.)

What is also particularly relevant is that the interview took place in Manzo's home, and that his parents were nearby. The Attorney General cites several persuasive cases that speak to how the coercive nature of a police interview is greatly reduced under these circumstances. (See, e.g., *United States v. Craighead* (9th Cir. 2008) 539 F.3d 1073, 1083 ["courts have generally been much less likely to find that an interrogation in the suspect's home was custodial in nature"]; see also, e.g., *Dyer v. Hornbeck* (9th Cir. 2013) 706 F.3d 1134, 1142 (conc. opn. of Smith, J.) ["a suspect is far less likely to be intimidated or coerced into talking to the police when she is in the familiar surroundings of her own home"]; see also, e.g., *United States v. Newton* (2d Cir. 2004) 369 F.3d 659, 675 ["absent an arrest, interrogation in the familiar surroundings of one's own home is generally not deemed custodial"].)

Manzo cites *United States v. Revels* (10th Cir. 2007) 510 F.3d 1269 (*Revels*), for the proposition that he "was being held in his own 'castle' with his 'freedom of movement . . . restricted to a degree consistent with a formal arrest.'" But the facts in *Revels* are readily distinguishable.

In *Revels*, *supra*, 510 F.3d 1269, seven police officers showed up at a suspected drug dealer's home at 6:00 a.m., to execute a search warrant. "When no one answered the door after officers knocked and announced their presence, the police forcibly entered the residence. Once inside, the officers encountered [the suspects], whom they immediately handcuffed and placed face down on the floor . . . ." (*Id*. at pp. 1270-1271.) During the search, the police separated and interviewed the two suspects; at issue in the case was whether the suspects were in custody during the search. While recognizing "that the home is generally a more familiar, comfortable atmosphere than a police interrogation room[,]" the court found that this "does nothing to alter our conclusion that this was a police-dominated environment." (*Id*. at p. 1275.)

Here, the circumstances were markedly different. The officers entered Manzo's home with his parent's permission and conducted a consensual interview. As

the trial court stated, the atmosphere was "extremely low key on both sides." Another important distinction with *Revels* is that the police in this case did not handcuff Manzo until after the interview was over.

In sum, we find that Manzo was not subject to a formal arrest or its functional equivalent during the interview at his home. Therefore, the trial court properly denied Manzo's motion to exclude the statements he made to the police at his home.

B. The holding of Seibert is inapplicable under these facts.

Police officers cannot employ a two-step interview process intentionally designed to weaken the protections of *Miranda*. (*Seibert, supra,* 542 U.S. 600.) In *Seibert,* police officers arrested the defendant and took her to the police station. Without *Miranda* warnings, police questioned the defendant for 30 to 40 minutes, during which time she made incriminating statements. (*Id.* at pp. 604-605 (plur. opn. of Souter, J.).) After a 20-minute break, the officers read the defendant her *Miranda* rights and obtained a written waiver. (*Id.* at p. 605.) The officers then asked the defendant the same questions and extracted the same admissions she had previously made. (*Ibid.*) At the suppression hearing, the officer "testified that he made a 'conscious decision' to [initially] withhold *Miranda* warnings, thus resorting to an interrogation technique he had been taught: question first, then give the warnings, and then repeat the question 'until I get the answer that she's already provided once.'" (*Id.* at pp. 605-606.)

In *Seibert,* the Supreme Court invalidated this two-step approach in which police officers would routinely: 1) arrest a suspect and obtain a confession during a custodial interrogation without *Miranda* warnings; and 2) then obtain the same statements after *Miranda* warnings had been given. (*Siebert, supra,* 542 U.S. at pp. 613-614 (plur. opn. of Souter, J.).) However, the Court made clear that when there is no evidence that police have deliberately and intentionally sought to circumvent *Miranda* (as in *Seibert*), its holding does not apply. (See *People v. Rios* (2009) 179 Cal.App.4th 491,

504-505; see also *In re Kenneth S.* (2005) 133 Cal.App.4th 54, 66 ["Unlike in *Seibert*, here there was no evidence of any protocol used in eliciting respondent's confession"].)

Here, unlike the interrogating officer in *Seibert*, Officer Gardea did not testify that she intentionally engaged in a two-step process designed to circumvent *Miranda*. The trial court also made no such factual finding.

But more importantly, we have already concluded that Manzo was not under arrest or its functional equivalent during the first interview. Therefore, lacking a threshold violation of *Miranda* in the first interview, the *Siebert* holding is simply inapplicable to the facts of this case. (See *United States v. Thompson* (7th Cir.2007) 496 F.3d 807, 811 ["In this case, *Miranda* warnings before the first confession were not required because [the defendant's] first interview was not custodial; *Seibert* therefore does not apply"]; see also *United States v. Stuemke* (S.D. Ohio 2006) 493 F.Supp.2d 990, 995-996 ["[*Miranda*] warnings must be given before subjecting a suspect to a *custodial* interrogation. Nothing in *Seibert* remotely suggests that the Supreme Court altered the *Miranda* rule to require the warnings also be given before interrogating a suspect who the officers know is not in custody"].)

We conclude that the trial court properly admitted Manzo's statements both at his home and at the police station.

III

DISPOSITION

The judgment is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

IKOLA, J.

GOETHALS, J.